

**CANADA – MEASURES AFFECTING THE IMPORTATION OF MILK
AND THE EXPORTATION OF DAIRY PRODUCTS**

Understanding between Canada and New Zealand
Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 22 December 2000, from the Permanent Mission of Canada and the Permanent Mission of New Zealand to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Canada and New Zealand would like to inform the Dispute Settlement Body that they have agreed on the attached "Agreed Procedures between Canada and New Zealand under Articles 21 and 22 of the Dispute Settlement Understanding in the follow-up to the dispute in *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products* (WT/DS113)".

For Canada:

(s) Hon. Sergio Marchi
Permanent Representative

For New Zealand:

(s) Mr. John Adank
Acting Permanent Representative

**Agreed Procedures
between Canada and New Zealand
under Articles 21 and 22
of the Dispute Settlement Understanding
in the follow-up to the dispute in
*Canada – Measures Affecting the Importation of Milk
and the Exportation of Dairy Products (WT/DS113)***

The Panel and Appellate Body reports in this dispute were adopted by the Dispute Settlement Body (DSB) on October 27, 1999.

On December 23, 1999, pursuant to Article 21.3(b) of the DSU, Canada, the United States and New Zealand agreed on the reasonable period of time for implementation of the DSB's recommendations and rulings (WT/DS103/10; WT/DS113/10). According to the terms of the December 23, 1999 agreement, as amended on December 11, 2000, the staged implementation process is to be completed by January 31, 2001.

Pursuant to this implementation process, Canada has undertaken certain measures, including the development of new mechanisms for the export of dairy products replacing the measures found to be inconsistent with Canada's obligations under the WTO Agreement.

Canada and New Zealand (the "parties") have agreed on the following procedures:

1. After the end of the period available to Canada to implement the DSB recommendations and rulings in *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products*, as extended by the December 11 agreement, should New Zealand consider that the situation described in Article 21.5 of the DSU exists, New Zealand will request consultations which the parties agree to hold within 10 days from the date of the request. Canada and New Zealand agree that at the end of such consultations, should either party so state, the parties will jointly consider that the consultations have failed to settle the dispute. Thenceforward New Zealand will be entitled to request the establishment of a panel pursuant to Article 21.5 of the DSU (the "Article 21.5 compliance panel").
2. At the first DSB meeting at which the New Zealand request for the establishment of an Article 21.5 compliance panel appears as an item on the agenda, Canada will accept the establishment of that panel.
3. New Zealand and Canada will cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's composition, excluding such time as the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either party may request the DSB to adopt the report of the Article 21.5 compliance panel at a DSB meeting that is held at least 20 days after the circulation of the report, unless either party appeals the report.
5. In case of an appeal of the Article 21.5 compliance panel report, the parties will cooperate to enable the Appellate Body to circulate its report within no more than 90 days from the date of notification of the appeal to the DSB.
6. In the event of an appeal, either party may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 compliance panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report.

7. New Zealand may request authorization to suspend concessions or other obligations pursuant to Article 22.2 of the DSU simultaneously with or after any New Zealand request for the establishment of a panel pursuant to paragraph 1.
8. Under Article 22.6 of the DSU, Canada will object to the level of suspension of concessions or other obligations and/or make a claim under DSU Article 22.3 before the date of the DSB meeting considering the New Zealand request and the matter shall be referred to arbitration pursuant to DSU Article 22.6. New Zealand will not pose any objection to the referral of the matter to such arbitration.
9. Where the matter has been referred to arbitration, the parties agree to request the Article 22.6 arbitrator, at the earliest possible moment, to suspend its work until either (a) the adoption of the Article 21.5 compliance panel report; or (b) if there is an appeal, the adoption of the Appellate Body report.
10. In the event that the DSB finds that Canada has failed to comply with the recommendations and rulings of the DSB or that the measures taken by Canada to comply with the recommendations and rulings of the DSB are inconsistent with the covered agreements as referred to in the Article 21.5 compliance panel request, the arbitrator will automatically resume its work. The parties will cooperate to enable the arbitrator to circulate its report within 60 days of the resumption of its work.
11. In the event that the DSB finds that Canada has complied with the recommendations and rulings of the DSB and that the measures taken by Canada to comply with the recommendations and rulings of the DSB are not inconsistent with the covered agreements as referred to in the Article 21.5 compliance panel request, New Zealand will withdraw its request under Article 22.2 of the DSU, thereby terminating the arbitration procedure.
12. The parties will cooperate to facilitate the participation of the original panelists in the Article 21.5 compliance panel and the Article 22.6 arbitration.
13. If any of the original panelists are not available within a reasonable period of time for either the Article 21.5 compliance panel or the Article 22.6 arbitration, or both, the parties agree to request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings in which such a replacement is required. If an original panelist is unavailable to serve in the Article 21.5 proceedings, the parties will further request that in making this appointment, the Director-General seek a person who will also be available to act in the Article 22.6 arbitration.
14. The parties agree to continue to cooperate in all matters related to these agreed procedures and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the parties consider that a procedural aspect has not been properly addressed, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps herein agreed.
15. These agreed procedures do not prejudice either party's rights to take any action or procedural step to protect its rights or interests, including the activation of any aspect of the provisions of the DSU.

Geneva, December 21, 2000

For Canada:

(s) Hon. Sergio Marchi
Ambassador
Permanent Mission of Canada

For New Zealand:

(s) Mr. John Adank
Acting Permanent Representative
Permanent Mission of New Zealand
